

(ATTACHMENT 1)

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DARRYL ORRIN BAKER,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

Civil Action No. 05-147 Erie

MEMORANDUM ORDER

This civil rights action was received by the Clerk of Court on May 16, 2005, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation [Doc. No. 44], filed on October 26, 2006, recommended that Defendants' motion to dismiss or for summary judgment [Doc. No. 40] be granted in part and dismissed without prejudice in part.

Specifically, the Magistrate Judge recommended that:

1. The motion to dismiss as to the retaliation claim should be granted as this Court lacks subject matter jurisdiction.
2. The motion to dismiss should be granted as to Defendants FCI-McKean, Warden, Officer Wesemen, and the Medical Department as they are improper parties under the FTCA.
3. The motion to dismiss should be granted as to the failure to protect claim as this Court lacks subject matter jurisdiction over it under the discretionary function exception to the FTCA.
4. The motion for summary judgment as to the medical negligence claim should be dismissed without prejudice.
5. The motion to dismiss should be granted as to the Plaintiff's request for punitive damages and Plaintiff's demand for jury trial.

The parties were allowed ten (10) days from the date of service to file objections. Service was made on Plaintiff by certified mail and on Defendants. Plaintiff filed

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objections on November 16, 2006 [Doc. No. 45]. After de novo review of the motion and documents in the case, together with the Report and Recommendation and objections thereto, the following order is entered:

AND NOW, this 14th day of December, 2006;

IT IS HEREBY ORDERED that:

1. The motion to dismiss as to the retaliation claim is GRANTED as this Court lacks subject matter jurisdiction.
2. The motion to dismiss is GRANTED as to Defendants FCI-McKean, Warden, Officer Wesemen, and the Medical Department as they are improper parties under the FTCA.
3. The motion to dismiss is GRANTED as to the failure to protect claim as this Court lacks subject matter jurisdiction over it under the discretionary function exception to the FTCA.
4. The motion for summary judgment as to the medical negligence claim is DISMISSED without prejudice.
5. The motion to dismiss is GRANTED as to the Plaintiff's request for punitive damages and Plaintiff's demand for jury trial.

The Report and Recommendation [Doc. No. 44] of Magistrate Judge Baxter, filed on October 26, 2006, is adopted as the opinion of the Court.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge

(ATTACHMENT 2)

Orders on Motions

1:05-cv-00147-SJM-SPB BAKER v. UNITED STATES, et al

U.S. District Court

Western District of Pennsylvania

Notice of Electronic Filing

The following transaction was received from rlh, entered on 1/8/2007 at 1:34 PM EST and filed on 1/8/2007

Case Name: BAKER v. UNITED STATES, et al

Case Number: 1:05-cv-147

Filer:

Document Number: 50

Docket Text:

ORDER: Plaintiff's [47] Motion to Alter or Amend Judgment is DENIED. Signed by Judge Sean J. McLaughlin on 1/8/2007. (rlh)

The following document(s) are associated with this transaction:

Document description: Main Document

Original filename: n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1098469114 [Date=1/8/2007] [FileNumber=719076-0]
[79a6781e68f0d7b51223010d748b817337ab10781102a2bf12f463efab523ad9abc04
ead83baa93f7cb858387ff021bd30f0e7577fea387cc14928df134ff87a]]

1:05-cv-147 Notice will be electronically mailed to:

Paul E. Skirtich paul.skirtich@usdoj.gov, carol.friedrich@usdoj.gov; usapaw.ecfcivil@usdoj.gov

1:05-cv-147 Filer will deliver notice by other means to:

DARRYL ORRIN BAKER
19613-039
Federal Prison Camp
P.O. Box 2000
Lewisburg, PA 17837

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ERIN BAKER,

Plaintiff,

Civil Action No. 05-147 Erie

UNITED STATES OF AMERICA, et al.,

Defendants.

ORDER

AND NOW, this 8th day of January, 2007, and upon consideration of the Plaintiff's motion to alter or amend judgment [Doc. No. 47], IT IS HEREBY ORDERED that Plaintiff's motions is DENIED.

s/ Sean J. McLaughlin
United States District Judge

cm: All parties of record
Susan Paradise Baxter, U.S. Magistrate Judge